

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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ENERGIZER BRANDS, LLC.,

Plaintiff,

Civil Action No. 19-CV-6486

-against-

**COMPLAINT**

MY BATTERY SUPPLIER, LLC,

Defendant.  
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Plaintiff Energizer Brands, LLC (“Energizer” or “Plaintiff”) by its undersigned counsel, K&L Gates LLP, for its Complaint against Defendant My Battery Supplier, LLC’s (“MBS” or “Defendant”) alleges as follows:

**NATURE OF THIS ACTION**

1. Energizer seeks injunctive relief and monetary damages for Defendant’s trademark infringement, false designation of origin, and unfair competition under the Lanham Act, 15 U.S.C. §§ 1114, 1125(a), and unfair and deceptive business practices in violation of N.Y. Gen. Bus. Law § 349, arising from Defendant’s sale of materially different Energizer products through its own website, as well as via online commerce sites including but not limited to, Amazon.com, eBay.com, and Walmart.com.

2. The Energizer products that MBS advertises and sells are not, in fact, genuine Energizer packaged products intended for retail sale.

3. First, many of the batteries that MBS advertises and sells under the Energizer brand and trademark are actually Energizer OEM batteries that are not intended for sale directly to consumers (and which bear the marking “Not for Retail Trade”) under the Energizer brand and trademark.

4. Second, MBS impermissibly alters genuine Energizer packaged products by, among other things, removing Energizer products from genuine packaging and repackaging them into small plastic bags or other unauthorized packages before selling them to consumers. In some instances, MBS repackages Energizer batteries in order to create product offerings that are not sold by Energizer.

5. Energizer products sold in unauthorized packaging do not contain any consumer safety information, safe handling instructions, warning or warranty copy, which is included on all Energizer packaging.

6. Finally, even the otherwise genuine Energizer batteries sold by MBS are materially different from authentic Energizer batteries sold by Energizer and/or its Authorized Resellers. Energizer cannot ensure that its batteries, when sold by unauthorized resellers such as MBS, have not been tampered with or otherwise mishandled in a manner that causes the batteries to be unsafe for consumer use. Nor can Energizer protect the marketplace from Energizer product that may be subject to recall or withdrawal because Energizer has no way to retrieve product purchased by resellers that are unknown to it.

7. Consumers who receive batteries bearing a “Not for Retail Trade” designation will be confused as to their intended use or warranty coverage, and blame Energizer, not MBS, for such confusion.

8. Consumers who receive batteries in unauthorized packaging from resellers such as MBS, blame Energizer for the poor state of the product, the packaging or any performance degradation caused by mishandling.

9. Consumers that receive damaged, discharged or otherwise unsatisfactory batteries, or batteries that damage their property or persons from MBS blame Energizer, not MBS.

10. Accordingly, Energizer alone suffers the reputational harm accompanied by such unauthorized practices.

11. Consumers are likely to be, and/or have been confused as to the origin, sponsorship, and/or approval of Energizer products sold by MBS and other unauthorized resellers, which are materially different from products sold by Energizer and its Authorized Resellers.

12. MBS's misconduct has produced and, unless enjoined by this Court, will continue to produce a likelihood of consumer confusion and deception, causing irreparable harm to consumers and Energizer.

13. As a result of MBS's actions, Energizer is suffering a loss of the enormous goodwill that it has created with its trademarks and is losing profits from lost sales of products. This lawsuit seeks permanent injunctive relief and damages for MBS's trademark infringement, false designation of origin, unfair competition, and unfair and deceptive business practices.

### **JURISDICTION & VENUE**

14. This Court has subject matter jurisdiction over the claims herein pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and (b), as the claims arise under the Trademark Laws of the United States. This Court has supplemental jurisdiction over the state law claim herein under 28 U.S.C. § 1367.

15. This Court has personal jurisdiction over MBS which is a New York LLC with its principal place of business in Brooklyn, New York. MBS regularly does business or has done business and sold products to consumers, including the Energizer Products, within New York through various websites, as explained herein.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the sole Defendant, MBS, resides in this judicial district, and because some of MBS' wrongful acts described herein occurred in this judicial district.

### **PARTIES**

17. Plaintiff Energizer Brands, LLC is a Delaware limited liability corporation with its principal place of business in St. Louis, Missouri. Energizer markets and sells under the trademarks described herein, a variety of products, including but not limited to household and specialty batteries, headlamps, and portable lights, for residential and commercial applications (the "Energizer Products").

18. Defendant MBS is a New York limited liability company with its principal place of business in Brooklyn, New York. MBS regularly does business or has done business and sold products to consumers, including the Energizer Products, within New York through various websites, including but not limited to: [www.thebatterysupplier.com](http://www.thebatterysupplier.com), [Amazon.com](http://Amazon.com) (Seller "MYBATTERYSUPPLIER"), [eBay.com](http://eBay.com) (Seller "1111deals"), and [Walmart.com](http://Walmart.com) (Seller "My Battery Supplier") (collectively, the "Websites").

### **FACTS COMMON TO ALL CLAIMS**

#### **A. Energizer's Trademark Usage**

19. Energizer is the owner of numerous validly existing and incontestable trademarks registered with the U.S. Patent and Trademark Office, including the ENERGIZER® brand and mark below (among many others):<sup>1</sup>

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<sup>1</sup> This is not an exhaustive list of Energizer's registered trademarks.

# ***Energizer***

Serial No. 78697159 (Reg. Date Mar. 7, 2006) (the “Mark”).

20. Energizer is the sole and exclusive owner of the above federally registered Mark on the USPTO’s Principal Register. The Mark has been in continuous use since at least 2006.<sup>2</sup> A true and correct copy of a printout from the Trademark Electronic Search System (“TESS”) evidencing this registration is attached hereto as Exhibit 1. Said registration is in full force and effect, and the Energizer Mark is incontestable pursuant to 15 U.S.C. § 1065.

21. Energizer owns several other federal trademark and service mark registrations. Said registrations are in full force and effect. All of Energizer’s trademarks, including the Energizer Mark, are collectively referred to as the “Energizer Marks.” *Supra* n.1.

22. Energizer advertises, distributes, and sells its products to consumers under the Energizer Marks.

23. Energizer has also acquired common law rights in the use of the Energizer Marks throughout the United States.

24. Energizer’s federal trademark registrations were duly and legally issued, are valid and subsisting, and constitute *prima facie* evidence of Energizer’s exclusive ownership of the Energizer Marks.

25. Energizer has invested significant time, money, and effort in advertising, promoting, and developing the Energizer Marks throughout the United States and the world. As a result of such actions, Energizer has established substantial goodwill and widespread recognition

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<sup>2</sup> The name ENERGIZER (used in connection with the sale of batteries) was registered in 1988 (Reg. No. 1502902), and claims a date of first use of 1955.

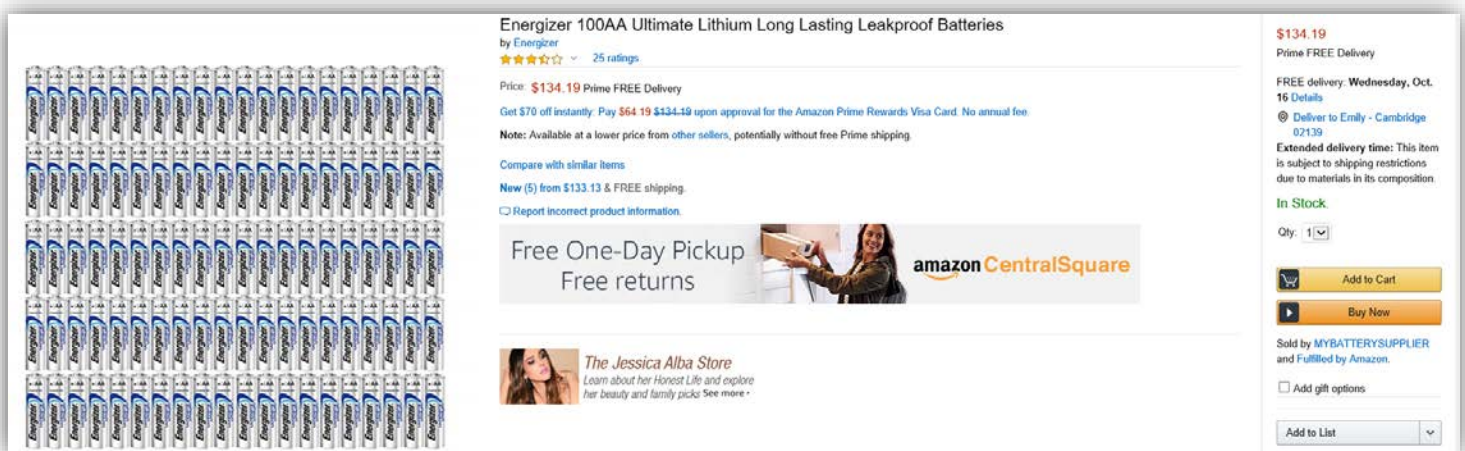
in its Energizer Marks, and those marks have become associated exclusively with Energizer and its products by both customers and potential customers, as well as the general public at large.

### ***B. MBS's Infringing and Improper Conduct***

26. MBS has sold and is currently selling Energizer Products on the Websites. MBS sells a variety of products and batteries in addition to the Energizer Products.

#### **1. MBS Sells OEM Batteries Not Intended for Retail Sale**

27. MBS offers for sale and sells Energizer Products that are not intended for resale to consumers. For example, MBS has a product listing for “Energizer 100AA Lithium Long Lasting Leakproof Batteries”:



28. Consumers who order this product receive loose batteries in a plain white box, each bearing a “Not for Retail Trade” designation:



29. Energizer does not bulk package any of its products loosely in a white cardboard box.

30. Energizer includes the “Not for Retail Trade” designation on its OEM batteries that are only sold in its business-to-business channel. Energizer batteries bearing the “Not for Retail Trade” designation are not authorized to be sold directly to consumers under the Energizer brand

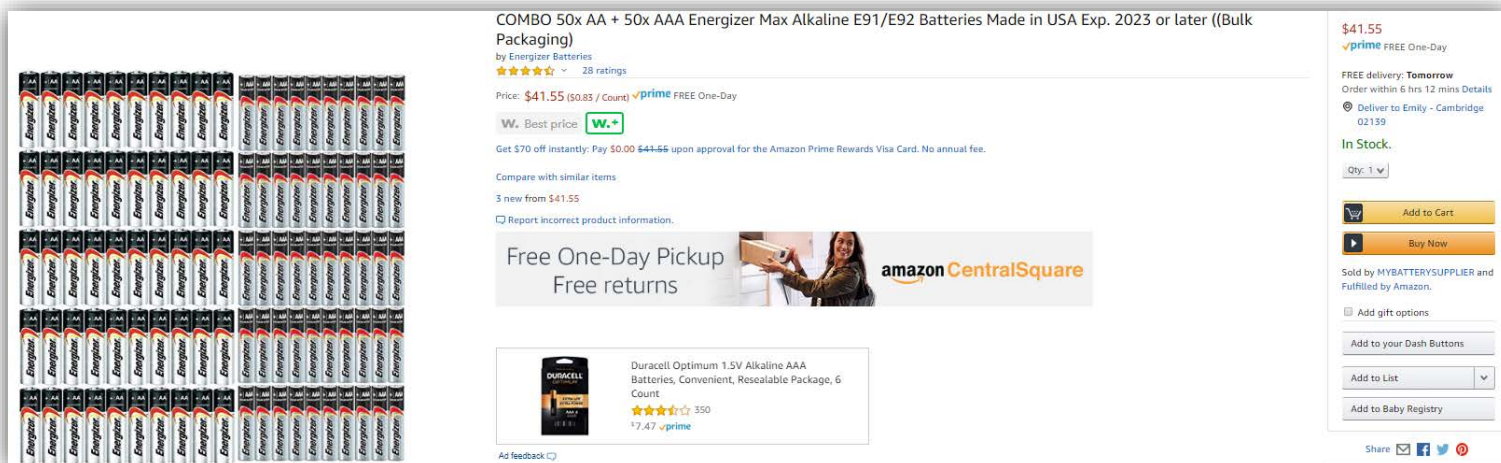
and mark, as such batteries do not carry the consumer safety information, safe handling instructions, warning or warranty copy that is present on genuine Energizer retail packaging.

31. Thus, Energizer Products sold by MBS which bear the “Not for Retail Trade” designation are materially different from genuine Energizer Products.

## 2. MBS Uses Unauthorized Packaging

32. MBS impermissibly alters genuine Energizer packaged products by, among other things, removing Energizer products from genuine packaging and repackaging them into small plastic bags or other unauthorized packages before selling them to consumers. *See supra.*

33. In some instances, MBS repackages Energizer batteries in order to create product offerings that are not sold by Energizer. For example:



COMBO 50x AA + 50x AAA Energizer Max Alkaline E91/E92 Batteries Made in USA Exp. 2023 or later ((Bulk Packaging))  
by Energizer Batteries  
★★★★☆ 28 ratings

Price: \$41.55 (\$0.83 / Count) ✓prime FREE One-Day  
W. Best price: W. +

Get \$70 off instantly: Pay \$0.00 ~~\$41.55~~ upon approval for the Amazon Prime Rewards Visa Card. No annual fee.

Compare with similar items  
3 new from \$41.55  
Report incorrect product information.

Free One-Day Pickup  
Free returns

amazon CentralSquare

Ad feedback

Share

\$41.55  
✓prime FREE One-Day

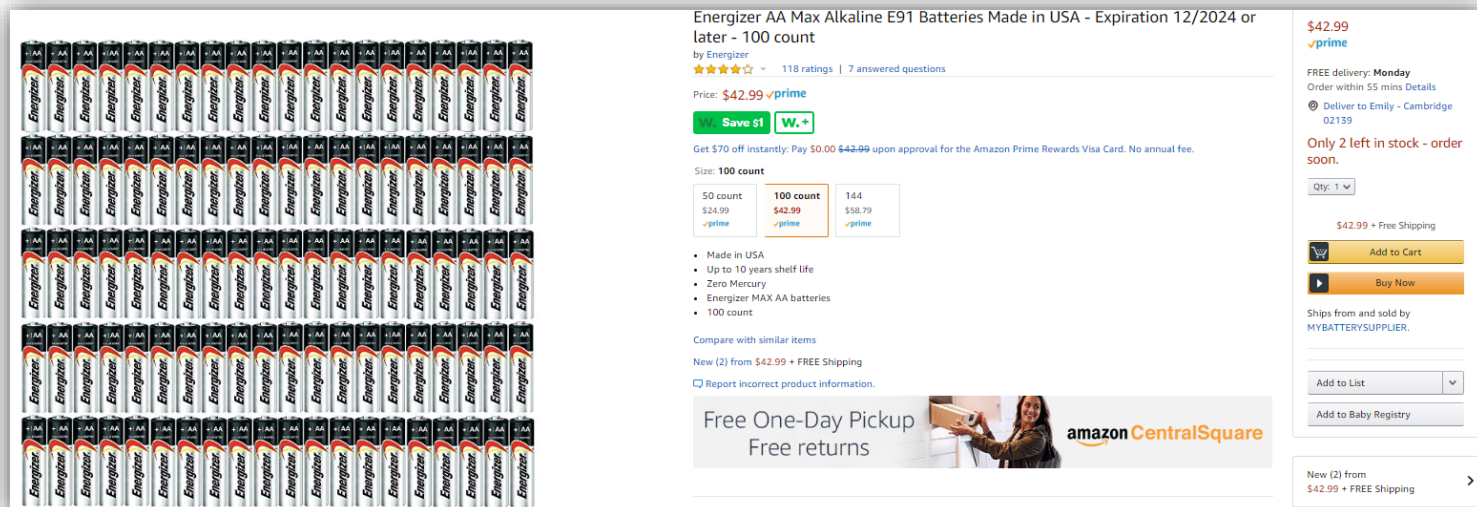
FREE delivery: Tomorrow  
Order within 6 hrs 12 mins Details  
Deliver to Emily - Cambridge 02139

In Stock.  
Qty: 1

Add to Cart  
Buy Now

Sold by MYBATTERYSUPPLIER and Fulfilled by Amazon.

Add gift options  
Add to your Dash Buttons  
Add to List  
Add to Baby Registry



Energizer AA Max Alkaline E91 Batteries Made in USA - Expiration 12/2024 or later - 100 count  
by Energizer  
★★★★☆ 118 ratings | 7 answered questions

Price: \$42.99 ✓prime  
Save \$1 W. +

Get \$70 off instantly: Pay \$0.00 ~~\$42.99~~ upon approval for the Amazon Prime Rewards Visa Card. No annual fee.

Size: 100 count

Size	Price	Prime
50 count	\$24.99	✓prime
100 count	\$42.99	✓prime
144	\$58.79	✓prime

- Made in USA
- Up to 10 years shelf life
- Zero Mercury
- Energizer MAX AA batteries
- 100 count

Compare with similar items  
New (2) from \$42.99 + FREE Shipping  
Report incorrect product information.

Free One-Day Pickup  
Free returns

amazon CentralSquare

Share

\$42.99  
✓prime

FREE delivery: Monday  
Order within 55 mins Details  
Deliver to Emily - Cambridge 02139

Only 2 left in stock - order soon.  
Qty: 1

\$42.99 + Free Shipping

Add to Cart  
Buy Now

Ships from and sold by MYBATTERYSUPPLIER.

Add to List  
Add to Baby Registry

New (2) from \$42.99 + FREE Shipping



**Energizer Max Alkaline 9 Volt, 24 Pack**  
by Energizer  
★★★★☆ 43 customer reviews | 5 answered questions

Price: **\$38.98** ✓prime FREE One-Day & FREE Returns  
Get \$70 off instantly: Pay \$0.00 \$38.98 upon approval for the Amazon Prime Rewards Visa Card. No annual fee.

- 24pcs. 9V Battery
- Up to 5-year shelf life
- Alkaline technology
- Best for everyday electronics
- PowerSeal Technology is the Energizer innovation that delivers energy you can rely on

Compare with similar items  
New (5) from \$38.98 ✓prime  
[Report incorrect product information.](#)

**\$38.98**  
✓prime FREE One-Day & FREE Returns  
FREE delivery: Tomorrow  
Order within 5 hrs 48 mins [Details](#)  
📍 Deliver to Emily - Cambridge 02139  
**In Stock.**  
Qty: 1    
Sold by **MYBATTERYSUPPLIER** and Fulfilled by Amazon.

**Energizer 24 Pk 9V Advanced Lithium Batteries LA522 Bulk**  
by Energizer  
★★★★☆ 73 customer reviews | [Share](#) [Email](#) [Facebook](#) [Twitter](#)

Size: 24 Pack

Refine by [Clear all](#)

**Shipping**  
☒ ✓prime  
☐ Free shipping

**Condition**  
☐ New

**Price + Shipping**  
**\$182.00** (\$7.58 / Count)  
✓prime  
+ \$11.38 estimated tax

**Condition** (Learn more)  
**New**

**Delivery**  

- Free Two-Day Shipping: Get it Thursday, October 3 (order within **11hr 50min**).
- [Shipping rates and return policy.](#)

**Seller Information**  
**MYBATTERYSUPPLIER**  
★★★★☆ **96% positive** over the past 12 months. (339,187 total ratings)

**Buying Options**

34. The above is only a small sampling of the types of Energizer Product offerings on Amazon.com that are fulfilled by MBS.

35. Because Energizer does not offer these specific product combinations, MBS is fulfilling orders for these listings by repackaging batteries in unauthorized packaging.

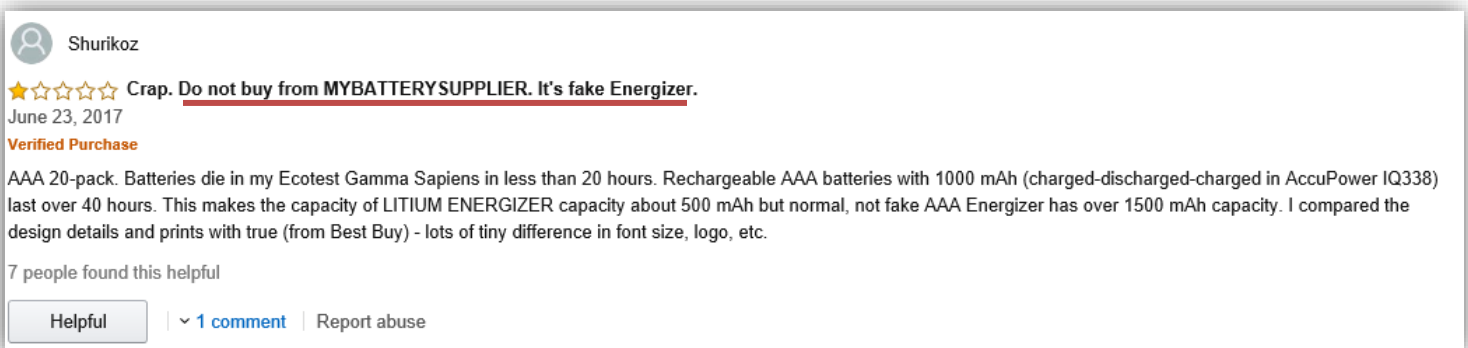
36. Energizer Products sold by MBS in unauthorized packaging do not contain any consumer safety information, safe handling instructions, warning or warranty copy, and are therefore materially different from genuine Energizer Products.

### 3. MBS Sells Potentially Defective and Unsafe Batteries

37. Finally, even the otherwise genuine Energizer batteries sold by MBS are materially different from authentic Energizer batteries sold by Energizer and/or its Authorized Resellers.

38. Energizer cannot ensure that its batteries, when sold by unauthorized resellers such as MBS, have not been tampered with or otherwise mishandled in a manner that causes the batteries to be unsafe for consumer use. Nor can Energizer protect the marketplace from Energizer product that may be subject to recall or withdrawal because Energizer has no way to retrieve product purchased by resellers that are unknown to it.

39. Negative consumer reviews for MBS product offerings on Amazon.com indicate that the batteries consumers receive are likely “knock-offs” or “rejects” because they arrive all or mostly all dead. At least one negative review called out products sold by ***MBS specifically***, suggesting that the batteries it sold could have been counterfeit:

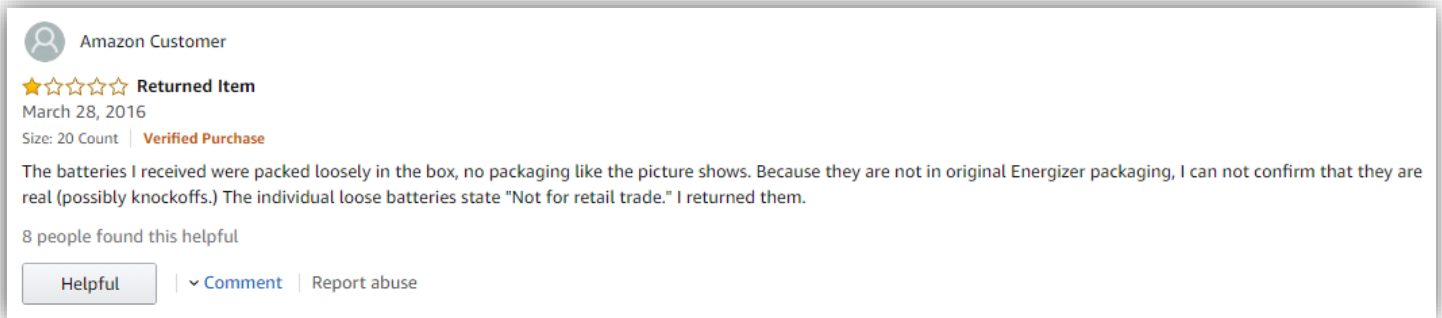


40. As such, even Energizer manufactured batteries sold by MBS in its unauthorized packaging are materially different than genuine Energizer batteries sold by Energizer and / or its Authorized Resellers.

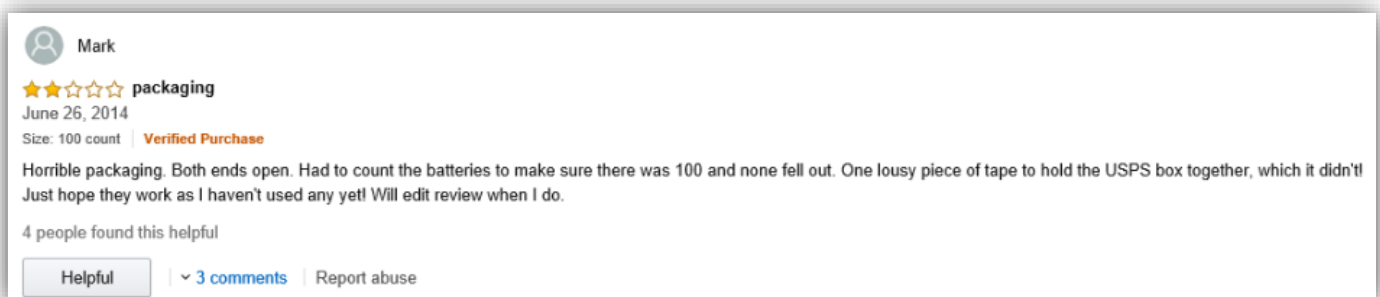
### ***C. Impact on Consumers and Energizer***

41. Consumers expect that the Energizer Products they purchase from MBS will be Energizer Products intended for resale, in genuine Energizer packaging, that are high-quality and long-lasting, as consumers have come to expect from Energizer.


42. Consumers who purchase Energizer Products believing them to be genuine Energizer Products are disappointed and confused when they receive Energizer Products that state “Not for Retail Trade”:



43. Consumers who purchase Energizer Products believing them to be genuine Energizer Products are disappointed when they receive Energizer Products in unauthorized packaging:



44. Consumers who purchase Energizer Products believing them to be genuine Energizer Products in genuine Energizer Packaging, who instead receive “horrible” or “shady packaging” blame Energizer for the state of the packaging:

 melissa


★☆☆☆☆ **No dates on batteries or packaging**

January 10, 2018

Size: 20 Count | **Verified Purchase**

Updated review 5/17/2018: These batteries don't work. Sending them back. Should've sent them back upon receipt given the shady packaging.


I received 5 individual boxes of 4 batteries that have no date on them. Fingers crossed that they work well. See pictures for details.



5 people found this helpful

| [Comment](#) | [Report abuse](#)

45. Consumers who purchase Energizer Products believing them to be genuine Energizer Products, who instead receive dead or unsatisfactory products blame Energizer:

 Solus McCrin

★☆☆☆☆ **It was a waste of money and not the Energizer I am used ...**


February 4, 2016

**Verified Purchase**

It had not met my expectation for it had not lasted more than 12 hrs on my candle lamp. It was a waste of money and not the Energizer I am used to.

5 people found this helpful

| [Comment](#) | [Report abuse](#)

 WESLEY CHUN

★☆☆☆☆ **Energizer batteries poorly made**

October 16, 2017

**Verified Purchase**

They don't make batteries like they used to. 17 were dead and 5 were leaking acid. I'm surprised and disappointed with energizer.

4 people found this helpful

| [Comment](#) | [Report abuse](#)



Raymond mendieta

★★★★★ I've used energizer batteries for years and now these particular ...

October 27, 2017

Verified Purchase

I've used energizer batteries for years and now these particular batteries would last a tv remote control about a week whereas before it would last about a year I don't know what they're doing to these batteries but they're not the old energizers anymore. I suppose they want you to keep buying them so they intentionally make the life of the batteries short. What's going on with product manufacturing these days? everybody's cutting corners and having no pride in manufacturing.

6 people found this helpful



R. C.

★★★★★ These batteries must've been on the verge of expiring. Or bootlegged.

August 21, 2018

Verified Purchase

I would never expect Energizer, as a brand to perform so unsatisfactory. I am exceptionally disappointed in this purchase. I'd like to think it was a bad pack or something but, if I were to re-purchase them and find the same unacceptable performance, I'd be very upset with myself for being duped again. If anyone out there has a different opinion I would love to hear it because I still REALLY need rechargeable batteries. I can't find them anywhere.



Casey N.

★★★★★ I'm completely disappointed in this product

September 9, 2016

Size: 50 Count | Verified Purchase

I'm completely disappointed in this product. I've used Energizer Lithium batteries for years now, and they always last a long time in electronic products. In early 2016 (around February), I ordered this economy pack of Energizer Lithium batteries to use in some "Insta-Bulb" LED light bulbs I had purchased through Amazon. I live in an old house that doesn't have wired in light bulbs in the closets, so I was putting in those battery powered LED bulbs throughout the house. As such, the bulbs are used very sparingly--only when I go to retrieve something from a closet.

When the batteries arrived, I immediately noticed that they come in different packaging than what you'd find in a retail store. Usually batteries at a retail store come sealed in heavy gauge plastic. That's not true for this product--the batteries ship in light gauge cardboard, and inside the main package are individually wrapped four-count packs of batteries which are themselves in light gauge cardboard.

A few months into my new light bulbs being up--let's say it was around May of 2016--I noticed that one of my light bulbs didn't work. I figured that maybe I had left the light on and the batteries had dwindled down. But then a couple of weeks later the same thing happened in a different closet. I again thought it was possible that I might have left the light on.

It's now September, and other closet lights have failed. But this is the real kicker: I had one closet that still didn't have a bulb in it yet, so I ordered one recently and put it up. I still had two 4-packs of batteries left from my 50 pack purchase earlier in the year. Normally those things have a shelf life of at least two to three years. Well, I installed the bulb and popped in four batteries from the 50 pack, and they were dead out of the box now. That left me with four others to try. Same thing--dead out of the box, even though I only purchased them maybe six months ago and they've been sitting in a drawer ever since.

That said, my advice would be to not buy Energizer Lithium batteries from Amazon. Most things I've bought from Amazon work great--and I am a Prime member and someone who buys from Amazon often. But clearly this is one product that you'd be better off getting from Wal-Mart or any store that sells a normal Energizer brand.

42 people found this helpful

Helpful

[Comment](#)

[Report abuse](#)

46. Thus, MBS's continued advertisement, display, and sale of materially different Energizer Products, which bear the Energizer Marks has harmed, and continues to harm, Energizer and its relationships with its Authorized Resellers and consumers.

47. Energizer has previously contacted MBS regarding its improper and illegal sale of Energizer Products on August 29, 2019, September 16, 2019, and September 20, 2019.

48. Therefore, MBS is aware that its sale of materially different Energizer Products constitutes trademark infringement under federal and state law.

49. Despite being warned three times by Energizer, MBS has continued to offer for sale and sell materially different Energizer Products.

50. MBS's sale of materially different Energizer Products to consumers results in actual and irreparable harm to Energizer and consumers.

51. MBS's actions substantially harm Energizer and its consumers, who ultimately purchase MBS's materially different Energizer Products believing them to be genuine, quality Energizer Products in original packaging.

52. MBS's actions substantially harm Energizer and its consumers by providing consumers with Energizer Products that may not be safe and effective due to the lack of quality control that they have come to expect from genuine Energizer Products sold by Energizer and/or its Authorized Resellers.

53. MBS's actions result in consumer confusion as well as the dilution of Energizer's goodwill and trade name, because consumers do not receive from MBS the genuine, quality Energizer Products that they believe they are purchasing.

54. As a result of MBS's actions, Energizer is suffering a loss of the enormous goodwill it has created with the Energizer Marks.

55. MBS is likely to continue the acts complained of herein, and unless restrained and enjoined, will continue to do so, causing Energizer and consumers irreparable harm.

**COUNT I**

(Trademark Infringement, 15 U.S.C. § 1114)

56. Energizer hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

57. This is a claim for federal trademark infringement under 15 U.S.C. § 1114.

58. Energizer engages in interstate activities designed to promote its goods and services sold, as well as the goodwill associated with the Energizer Marks, throughout the United States.

59. The Energizer Marks have been, and will continue to be, known throughout the United States as identifying and distinguishing Energizer's products and services.

60. The acts of MBS as alleged herein constitute the use in commerce, without the consent of Energizer, of a reproduction, counterfeit, copy, or colorable imitation of the Energizer Marks in connection with the sale, offering for sale, distribution, or advertising of goods, which use is likely to cause confusion or mistake, or to deceive consumer, therefore infringes Energizer's rights in the Energizer Marks, in violation of the Lanham Act.

61. MBS has used, and continues to use, the Energizer Marks in the sale of Energizer Products that: (1) are not genuine Energizer Products in packaging intended for sale to consumers; (2) are broken up and repackaged into packaging that is not genuine Energizer packaging lacking any consumer safety information, safe handling instructions, warning or warranty copy; and (3) may be potentially defective and/or unsafe for consumers due to lack of oversight from Energizer. Therefore, the Energizer Products sold by MBS are materially different from those sold by Energizer and / or its Authorized Resellers.

62. By selling or distributing products using the Energizer Marks that are materially different from those sold by Energizer as alleged herein, MBS is engaging in trademark infringement in violation of 15 U.S.C. § 1114.

63. MBS has used, and continues to use, the Energizer Marks to sell products that are materially different from those sold by Energizer in violation of 15 U.S.C. § 1114, and MBS's activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and public deception in the marketplace, and injury to Energizer's goodwill and reputation as symbolized by the Energizer Marks, for which Energizer has no adequate remedy at law.

64. MBS's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Energizer Marks, thereby causing immediate, substantial, and irreparable injury to Energizer.

65. By selling and advertising products under the Energizer Marks that are materially different from those sold by Energizer, MBS is using the Energizer Marks in connection with the sale, offering for sale, distribution, and/or advertising of goods and services to the public, without Energizer's consent. Defendants are engaging in trademark infringement in violation of 15 U.S.C. § 1114. Accordingly, Energizer is entitled to a judgment of three times its damages and MBS's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).

66. Energizer has been, and continues to be, damaged as a direct and proximate result of MBS's activities and conduct. MBS has profited thereby, and unless its conduct is enjoined, Energizer's reputation and goodwill will continue to suffer irreparable injury that cannot adequately be calculated or compensated by monetary damages. Accordingly, Energizer is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.



**COUNT II**

(Trademark Infringement / False Designation of Origin / Unfair Competition,  
15 U.S.C. § 1125(a))

67. Energizer hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

68. This is a claim for federal trademark infringement, false designation of origin, and unfair competition under 15 U.S.C. § 1125(a).

69. Energizer engages in interstate activities designed to promote its goods and services sold, as well as the goodwill associated with the Energizer Marks, throughout the United States.

70. The Energizer Marks have been, and will continue to be, known throughout the United States as identifying and distinguishing Energizer's products and services.

71. By selling or distributing products using the Energizer Marks that are materially different from those sold by Energizer as alleged herein, MBS is misrepresenting the nature, characteristics, and qualities of its goods and services in violation of 15 U.S.C. § 1125(a).

72. By selling or distributing products using the Energizer Marks that are materially different from those sold by Energizer as alleged herein, MBS is falsely designating the origin of its goods and services, and/or falsely representing sponsorship by, affiliation with, or connection to Energizer and its goods and services in violation of 15 U.S.C. § 1125(a).

73. MBS's continued use of the Energizer Marks constitutes the use in interstate commerce of a word, term, name, symbol, or device, or any combination thereof, or false designation of origin, in connection with the sale, or offering for sale, of goods in violation of 15 U.S.C. § 1125(a)(1)(A).

74. MBS has used, and continues to use, the Energizer Marks to sell products that are materially different from those sold by Energizer in violation of 15 U.S.C. § 1125(a), and MBS's

activities have caused and, unless enjoined by this Court, will continue to cause a likelihood of confusion and public deception in the marketplace, and injury to Energizer's goodwill and reputation as symbolized by the Energizer Marks, for which Energizer has no adequate remedy at law.

75. MBS's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with the Energizer Marks, thereby causing immediate, substantial, and irreparable injury to Energizer.

76. By selling and advertising products under the Energizer Marks that are materially different from those sold by Energizer, MBS is using the Energizer Marks in connection with the sale, offering for sale, distribution, and/or advertising of goods and services to the public, without Energizer's consent. Defendants are engaging in trademark infringement and unfair competition in violation of 15 U.S.C. 1125(a). Accordingly, Energizer is entitled to a judgment of three times its damages and MBS's ill-gotten profits, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117(a).

77. Energizer has been, and continues to be, damaged as a direct and proximate result of MBS's activities and conduct. MBS has profited thereby, and unless its conduct is enjoined, Energizer's reputation and goodwill will continue to suffer irreparable injury that cannot adequately be calculated or compensated by money damages. Accordingly, Energizer is entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

### **COUNT III**

(Unfair and Deceptive Trade Practices, N.Y. Gen. Bus. Law § 349)

78. Energizer hereby realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

79. As detailed above, MBS's sale of materially different Energizer Products to consumers constitutes an unfair and deceptive business practice.

80. MBS' offering for sale and sale of materially different Energizer Products is directed at consumers, who seek to purchase high-quality Energizer Products online.

81. MBS' offering for sale and sale of materially different Energizer Products is misleading to consumers, who believe that they are purchasing genuine, high-quality Energizer Products intended for retail, in original Energizer packaging.

82. Consumers would not purchase Energizer Products from MBS if they knew that such products were materially different from genuine Energizer Products sold by Energizer and/or its Authorized Resellers.

83. As a proximate result of MBS's misconduct, Energizer has suffered actual damages.

84. MBS's acts have irreparably harmed Energizer and, unless enjoined, will continue to do so in a manner affording Energizer no adequate remedy at law.

85. MBS has refused to desist from these wrongful acts, and therefore MBS has indicated that it intends to continue its unlawful conduct, unless restrained by this Court.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff Energizer Brands, LLC, prays for judgment in its favor and against Defendant My Battery Supplier, LLC providing the following relief:

1. Finding that, (i) as to Count I, MBS's sale of materially different Energizer Products constitutes trademark infringement in violation of 15 U.S.C. § 1114; (ii) as to Count II, MBS's sale of materially different Energizer Products constitutes trademark infringement, false designation of origin, and unfair competition, in violation of 15

U.S.C. § 1125(a); as to Count III, MBS's sale of materially different Energizer Products constitutes unfair and deceptive practices in violation of N.Y. Gen. Bus. Law § 349; resulting in MBS, its officers, agents, servants, employees, attorneys, and any other persons or entities acting in concert or participation with MBS, including but not limited to any online platforms such as Amazon.com, eBay.com, Walmart.com, or any other website, website host, website administrator, domain registrar, or internet service provider, being preliminarily and permanently enjoined from:

- a. using the Energizer Marks or any other of Energizer's intellectual property;
  - b. selling, or taking any steps to sell, any Energizer Products;
  - c. engaging in any activity constituting unfair competition with Energizer;
  - d. inducing, assisting, or abetting any other person or entity in engaging in or performing any of the business activities described in the paragraphs above.
2. Award Energizer its damages suffered as a result of MBS's acts and treble said damages as provided by law pursuant to 15 U.S.C. § 1117 and N.Y. Gen. Bus. Law § 349(h);
  3. Award Energizer its reasonable attorneys' fees in bringing this action as allowed by law pursuant to 15 U.S.C. § 1117 and N.Y. Gen. Bus. Law § 349(h);
  4. Award Energizer pre-judgment and post-judgment interest in the maximum amount allowed under the law;
  5. Award Energizer the costs incurred in bringing this action; and
  6. Grant Energizer such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Energizer hereby requests a trial by jury on all causes of action so triable.

Dated: November 15, 2019

Respectfully submitted,

/s/ Priya Chadha

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LLC*